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COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Sixth session
Vienna, 28 April-9 May 1997
Item 5 (a) of the provisional agenda*

Criminal Justice Reform and Strengthening of the Legal Institutions

Measures to Regulate Firearms

Statement** submitted by the National Rifle Association of America - Institute for Legislative Action (roster), a non-governmental organization in consultative status with the Economic and Social Council

The Secretary-General has received the attached statement,*** which is circulated in accordance with paragraphs 30 and 31 of Economic and Social Council resolution 1996/31.

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* E/CN.15/1997/1.

** The views expressed in this statement are those of the author, and do not necessarily reflect the views of the United Nations Secretariat.

*** This statement is reproduced in the form in which it was received .

Whereas the United Nations has become involved in the issue of "Firearms regulation for purposes of crime prevention and public safety," ECOSOC resolution 1995/27, section IV. A., and ECOSOC resolution 1996/28, section IV. A;

Recognizing that civilian possession of firearms is an old, legitimate and traditional institution in most member states for hunting, sport shooting activities (target and clay pigeon shooting, firearms collecting, etcetera) and protection from crime;

Further recognizing that hundreds of millions of firearms are legitimately possessed by civilians;

Acknowledging that different cultures and member states vary greatly in how they approach the issue of firearms;

Being aware that the issue of firearms is extremely sensitive politically and in some member states involves fundamental questions of the relationship between the citizen and the state itself;

Calling attention to the fact that there is extreme interest, world-wide, in the work of the United Nations on firearms by individuals and groups active in hunting and sport shooting activities;

Being extremely concerned that in the two years in which the United Nations has been actively involved in the issue of firearms, there has been no public meeting, forum or gathering in which any of the thousands of groups involved in hunting and sport shooting activities have been able to officially express their opinions and concerns;

Further calling attention to the fact the "Report of the Secretary General - Measures to Regulate Firearms" (E/CN.15/1997/4), the "International Study on Firearms Regulation" summarized in the Report and the accompanying recommendations, have addressed issues of internal domestic firearms policies of the member states as opposed to international issues;

Therefore, the National Rifle Association of America - Institute for Legislative Action (NRA - ILA), the world's largest and most active group concerned with lawful firearms ownership, hunting, sport shooting activities and the prevention of crime, makes these observations and comments:

1. The "International Study on Firearms Regulation" is incomplete and inconclusive. Its conclusions are not supported and its recommendations are not warranted at this time. More specifically:

- The "Report of the Secretary General - Measures to Regulate Firearms" (E/CN.15/1997/4) itself notes that "the project team considered the study to be exploratory in nature..." (page 11 of the Report). In addition:

• The Report further states that, "it should not be assumed that the results of the research study were globally representative..." (page 12 of the report), and further,

• The document admits that, "existing sources of information including the international study on firearms regulation still could not be used to evaluate the comparative effectiveness of current levels of firearms regulation in reducing harm..." (page 26 of the Report).

• The study does not include data from the United States of America. More civilian owned firearms probably exist in the United States than any other jurisdiction. This situation has been constantly referred to and discussed by the parties involved with this process. An international study of firearms regulation which does not include the US is, with all due respect, incomplete.

• The study makes no reference to the immense amount of research which has been done prior to this time on topics which the study itself purports to address. Examples of this research include: Gary Kleck's *Point Blank: Guns and Violence in America* (NY: Aldine de Gruyter, 1991), a statistical analysis indicating a lack of relationship between gun availability and violent crime or between restrictive gun laws and on crime rates. See also, James D. Wright, Peter H. Rossi, and Kathleen Daly, *Under the Gun: Weapons, Crime, and Violence in America* (NY: Aldine, 1983). In David B. Kopel's, *The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?* (Amherst, N.Y.: Prometheus Books, 1992) there is a non-statistical study finding it unproductive to attempt to attribute low crime rates in some countries and high rates in others, to gun laws. Others have noted an absence of sophisticated statistical efforts at international measurement relating gun laws to homicide. See Louise L. Shelley, ed., *Readings in Comparative Criminology* (Carbondale: Southern Illinois Univ. Press, 1981), p. 80. A leading American criminologist summarized why countries are safe or unsafe and found guns not to be a factor, despite an anti-gun

bias. Freda Adler, *Nations Not Obsessed with Crime* (Littleton, Colo.: F.B. Rothman, 1983).

- In addition, the report ignores studies indicating significant and effective use of civilian possessed firearms in the prevention of crime. This best of this research can be found in Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun," *Journal of Criminal Law and Criminology* 86(1);150-187 (1995). The Kleck-Gertz data finds disproportionately that civilian possessed firearms are used to prevent crime by persons who are most apt to be victimized, and least apt to have adequate police protection.

2. The process which produced "Report of the Secretary General - Measures to Regulate Firearms" (E/CN.15/1997/4 is based upon unexamined and not necessarily correct assumptions:

- That firearms regulation, which has been and continues to be overwhelmingly a question of internal domestic policy of the member states, is within the mandate of the United Nations.

- That there is a simple causal relationship between the number of firearms in society and the amount of crime.

- That the number of civilian firearms in member states should be reduced as a matter of general policy.

- That the internal, domestic firearms regulations of one member state are the proper concern of another member state, not because of inadequate enforcement, but because the regulations are considered inadequate by the second state.

3. The conclusion of the Report, that the general existing system of firearms regulation, through member states' use of their domestic firearms regulations and import/export controls (page 7 of the Report) is not "sufficient," is radical in its implications vis-a-vis the relationship of the UN to member states. Because of this

conclusion, the Report, in essence, recommends United Nations involvement in the internal affairs of member states.

4. The Report and the recommendations are not sufficiently sensitive to local cultures where hunting is a respected and accepted activity. In the US alone there are twelve million deer hunters. Hunting is fundamental to many cultures and firearms are integral to that activity. However the Report makes only scant reference to this. Non-hunting societies should not seek to impose their values on hunting societies.

5. In the United States firearm regulation or, as it is more frequently called, "gun control," is one of the most decisive and hotly debated public issues. Firearms have played, and continue to play, an important role in American history and culture. If "gun control" alone did not furnish enough fuel for controversy, the United Nations itself furnishes more. As the Commission well knows, there are other UN efforts in the arena of international firearms regulation. This leads to an increasing feeling in some circles that there is a concerted UN effort to restrict firearms drastically. A situation which can be perceived as a UN effort promoting gun control at the national level should be avoided.

6. With further reference to the United States, the Second Amendment to the Constitution of the United States specifically recognizes the people's right to keep and bear arms. Any attempted interference with this right by any international organization or other national state would be looked upon gravely by the holders of that right.

7. The current orientation of these United Nations efforts regarding firearms regulation is dissipating energy and effort from more pressing and relevant problems, i.e., illegal arms smuggling as it relates to criminal activity and terrorism.

Consequently, NRA - ILA urges the Commission in reference to the future of this effort to:

I. Re-examine and re-evaluate the study's methodology, focus and direction to, at a minimum:

a. Take into consideration prior, relevant research;

b. Make sure that data from the United States is included;

c. Examine the role civilian possession of firearms plays in the prevention of crime.

II. Ensure that adequate input is received from individuals and groups active in hunting and sport shooting activities.

III. Focus the Commission's endeavors, in this field, to research on and recommendations regarding topics having to do with international, rather than national aspects of the issues.

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Sixth session
Vienna, 28 April-9 May 1997
Item 6, 8 and 9 (c) of the provisional agenda*

International cooperation in combating transnational crime

Use and application of United Nations standards and norms in crime prevention and criminal justice

Technical cooperation, including resource mobilization, and coordination of activities: Cooperation with other United Nations bodies and other entities

Statement** submitted by Centro Nazionale di Prevenzione e Difesa Sociale, a non-governmental organization in consultative status with the Economic and Social Council (category II), on behalf of the International Scientific and Professional Advisory Council.

The Secretary-General has received the attached statement,*** which is circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31 of 25 July 1996.

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* E/CN.15/1997/1.

** The views expressed in this statement are those of the author, and do not necessarily reflect the views of the United Nations Secretariat.

*** This statement is reproduced in the form in which it was received .

"ISPAC Statement "
to the
Commission on Crime Prevention and Criminal Justice
at its sixth session
(Vienna, Austria, 28 April to 9 May 1997)

The International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme (ISPAC) and the Centro Nazionale di Prevenzione e Difesa Sociale (CNPDS) organized, in cooperation with the Crime Prevention and Criminal Justice Division of the UN Office at Vienna and with the support of the Ministries of Justice and Interior of Italy, a major International Conference on "Migration and Crime: global and regional problems and responses". It was held in Courmayeur, Mont Blanc (Italy), from 5 to 8 October 1996, following the general meeting of the ISPAC Membership. The Conference was another in the series of major events sponsored by ISPAC, such as the 1994 International Conference on Money Laundering, also convened in Courmayeur, Mont Blanc, with the support of the Fondazione Centro Internazionale su Diritto, Società e Economia, and the ancillary meeting on Migration and Crime, held at the Ninth UN Congress on the Prevention of Crime and the Treatment of Offenders (Cairo, 29 April - 9 May 1995), which provided valuable input and facilitated the Conference's planning. The presentations made in Cairo were published in a volume* distributed to the 170 registered Courmayeur Conference participants, who included European Union and Italian Government dignitaries, representatives of international organizations and individual experts. The multidisciplinary trilingual Conference (English, French and Italian) provided a forum of over 55 programme presentations, as well as a lively discussion on salient issues and possible follow-up. The Proceedings of the Conference will be published in the series of ISPAC publications.

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* Ernesto U. Savona."Responding to Money Laundering". Harwood Accademic Publishers. Amsterdam (The Netherlands). 1997.

Speaker after speaker stressed the complexity of the relationship between migration and crime, in particular, the lack of a direct causal connection between them. Illegally entering immigrants are generally not criminals, but those traffickers assisting them often are. On the other hand, the high percentage of foreigners among the prison populations of many countries, especially in Europe (e.g. 1/3 in Italy) was noted: it can be explained in terms of various factors, including uprootedness, combined with the lack of social integration. The degree of violation of laws varies considerably, ranging from minor misdemeanors, linked to some migrants' illegal status, to very serious violent crimes. There is great variety in terms of the offences committed by foreign migrants; there is also considerable variety in the types of migrants: economic migrants in search of job opportunities and political asylum seekers are the most obvious categories; however there are also migratory criminals who use one country to prey on the unwary and the other, for shelter against the consequences. The distinction between legal and irregular migrants (sometimes inappropriately termed "illegal aliens") says in itself little about their respective involvement in crime. However, these undocumented migrants tend to be singled out as the main culprits, while they are more often victims than perpetrators, often being subject to extortion and blackmail, not infrequently by their own compatriots.

While migration-linked crime is most often seen as a problem in host (and to a lesser extent, in transit countries), the source of migration pressure lies primarily in the push factors in the countries of origin. Poor governance, economic mismanagement, crimes against nature and acts of omission leading to ecological neglect contribute to an anomic situation. Governmental criminality involving gross human rights violations for political control, which sometimes even takes the form of genocide, is a major cause of exodus from zones of turmoil to zones of peace. However, the lack of sufficient local economic opportunities in overcrowded Third World cities and the income gap between countries of destination and of origin (and their misleading portrayal on

television) were also considered important factors in the decision to emigrate among "economic migrants". The latter group should not be confused with environmental refugees who have no real choice to stay behind and whose moral right to seek opportunities to live elsewhere deserves more prominent consideration. It was generally agreed that most migration results from push factors in countries of origin and not from pull factors of countries of destination.

Crime associated with the transit stage between source and ultimate host countries can be partly attributed to their being caught in the contradiction that, especially since 1989, capital can move freely around the world while labour cannot (except in the European Union). This mismatch between the right to emigrate and to remigrate, on the one hand, and the absence of a right to immigrate, on the other, is bound to play into the hands of organized crime which exploits this structural defect of the international system, creates sophisticated false documents and underground channels of migration while exploiting those willing and/or forced to emigrate. However, while the smuggling of people across borders is generally organized, by no means is all of it under the control of what is commonly known as "organized crime"; a distinction must be made between illegal migration and trafficking. Especially in the latter case, migrants, in the country of destination risk being forced into crime by the organization that smuggled them into a country in the first place. On the whole, migrants run a higher risk of becoming victims of crimes rather than criminals themselves. They run, for instance, the risk of becoming victims of hate crimes by racist and right-wing native groups who portray these newcomers as unwanted competitors on a labour and housing market that is already strained. While such hate crimes are by definition largely inter-ethnic, a considerable part of the victimization is intra-ethnic within the migrant communities. However, for certain categories of crime, such as robbery, there is, in some countries, also a sizable share of foreigners involved. The criminality of these individuals is then used to legitimize racist violence against all migrants.

Statistics on crimes by and against foreigners are difficult to compare from country to country due to shortcomings in definitions and reporting. However, there is a considerable body of statistical evidence from various countries in the twentieth century that indicates that first generation immigrants in both North America and Europe (regions with relatively reliable longitudinal statistics) committed fewer crimes than comparable groups of citizens in the host country. Their children, however, may tend, in at least some countries, to surpass the crime rates of their peers in the host country. Here there is a task for those who are in charge of social integration policies: special efforts should be made to facilitate successful acculturation in schools and civil society, and in professional training, as marginalization encourages criminal activities. An especially worrisome feature, however, are those first generation criminals who come from failed States in Eastern and Southern Europe and use their former skills in the secret services, the military and policing to further their private careers as transnational criminals operating in the framework of larger organized crime units engaged in the smuggling of drugs, arms and human beings (e.g. for prostitution), as well as extortion and intimidation. To cope with this type of sophisticated and brutal criminality, law enforcement agencies must both be upgraded and become active partners in strengthened international cooperation against crime.

However, it was repeatedly pointed out at the conference that it would be a mistake to deal with crime problems linked to migration only in terms of law enforcement. Rather, a socio-economic policy approach, removing some of the criminogenic factors and fostering a more balanced and coordinated (im)migration policy consistent with international law is required. Migration, it was stated, was as old as recorded history and a natural part of the human experience. Migrants were, and are, often a dynamic and valuable addition to a society and to its further development, and should be treated with consideration and respect as human beings and carriers of the cultural heritage of mankind. Several speakers stressed that, in addition to the policies of trade liberalization towards, and improvement of employment opportunities in, source

countries, and in better integration trajectories in host countries, there is also a need for a sustainable migration regime that regulates and channels, rather than blocs and criminalizes what is a natural and as such inevitable flow of human beings. The importance of regional if not global harmonization of migration policies, of creating a transparent regime that is regularly reviewed if one wants to avoid unwanted displacement of problems and people, was stressed by several speakers. The real threat, it was pointed out, is often not (clandestine) migration itself, but the exploitation of it by organized crime if there is no legal solution to accommodate the human urge to migrate. The use of police solutions to the problem of migration, on the one hand, and the use of immigration polices to deal with crime, on the other, give rise to confusion among the public which, in turn, reduces the chance of arriving at effective but humane policies in either field. Many speakers stressed the need to redirect funds towards genuine policies of early warning and prevention - a topic which ISPAC has decided to focus on in its 1997 Conference on:

"Violent Crime and Conflict:

Towards early Warning and Prevention Mechanisms"

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Item 4 and 9 (c) of the provisional agenda*

Promotion and maintenance of the rule of law and good governance; action against corruption

Technical cooperation, including resource mobilization, and coordination of activities: Cooperation with other United Nations bodies and other entities

Statement** submitted by the International Society of Social Defence, a non-governmental organization in consultative status with the Economic and Social Council (category II).

The Secretary-General has received the attached statement,*** which is circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31 of 25 July 1996.

* E/CN.15/1997/1.

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*** This statement is reproduced in the form in which it was received .

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ISSD Statement
to the
Commission on Crime Prevention and Criminal Justice
at its sixth session
(Vienna. Austria, 28 April to 9 May 1997)

1. The International Society of Social Defence (ISSD), the Centro Nazionale di Prevenzione e Difesa Sociale (CNPDS) and the Centro Studi Giuridici "Michele De Pietro" jointly organized the XIIIth International Congress on Social Defence. It was held in Lecce (Italy), from 28 to 30 November 1996, in cooperation with the Crime Prevention and Criminal Justice Division of the UN Office at Vienna, under the auspices of the Ministry of Justice of Italy. The theme of the Congress was "Social Defence, Corruption, and the Protection of Public Administration and the Independence of Justice". As in the past Congresses, the theme related to major UN crime programme concerns. The Congress proceedings and its conclusions should provide topical input for the United Nations work in this field, particularly in implementation of General Assembly resolution 51/59 on Action against corruption, adopted at the recommendation of the Commission on Crime Prevention and Criminal Justice and Economic and Social Council on 12 December 1996, including its annex with the Code of Conduct for Public Officials, and General Assembly resolution 51/196 of 16 December 1996 on the proposed United Nations Declaration against Corruption and Bribery in International Commercial Transactions.

2. After an analysis of the phenomena involved, the Meeting considered the possible counter-measures, including those falling within the ambit of criminal law, and of civil, constitutional, fiscal and public law, as well as judicial, administrative and other measures of control. Judicial independence was deemed a key safeguard against corruption, and its role in combating it was emphasized. Particular attention was paid to the need for the coordination of international initiatives against corruption in any future strategy.

3. The multidisciplinary, quadrilingual (English, French, Italian, Spanish) Conference was attended by a wide range of professionals from a number of countries, providing a representative mix of relevant expertise and experience, and a forum for many (over 40) in-depth presentations, as well as an animated discussion on the salient issues and possible follow-up. The approach sought to link theory and practice, and the participation of both officials and scholars enriched the debate and contributed to its dynamic character.

4. In analysing the problem of corruption in its contemporary manifestations, the question was raised of whether these represented an age-old phenomenon in its modern forms, or whether it had expanded and intensified in recent times, requiring exceptional new countermeasures. While it can be said that corruption, like poverty, is always among us, sparing no society - developed or developing - and though its true extent is difficult to determine, it has become more visible, due to its exposure by the media and public calls for accountability. Its growth may be linked to the increasing invasiveness of the State in daily life, with the myriad of necessary permits and authorizations. But corruption can permeate various domains and has complex, interfacing, causes which defy simplistic "solutions".

5. It was felt that corruption, especially high-level corruption, was a major threat to the rule of law and democratic governance; it contravenes essential human rights - not only civil and political rights but also economic and social ones, since it perverts exchange arrangements, impedes reciprocity and destroys interpersonal relations. The rule of law envisages certain distinctions - e.g. between the public and the private, and certain divisions- especially the separation of powers (legislative, executive and judiciary), which are undermined by corruption.

6. Since it thrives on the collusion between economic and public power, it was felt that their interfaces need to be minimized for corruption to be curtailed. But, even here, there can be some paradoxical effects: for example, free market policies and leveling effects of fair competition may generate corruption as a means of gaining competitive advantage. A corrupt competitor may through clandestine machinations, such as money laundering, gain ground at no cost or pass it on to the consumers. Such covert operations require the proper adaptation and refinement of traditional penal law measures, for example to deal with the proceeds of crime, to affirm the criminal responsibility of administrators and financial inspectors, to assure more transparent corporate accounting procedures, etc.. This means, also, the use and development of the necessary expertise, appropriate training, and ongoing collaboration between the various institutions and professions involved, especially in multifaceted and camouflaged cases requiring sophisticated investigations as part of the criminal justice process. The judiciary, of course, has a key role to play in this endeavour, and it was agreed that its independence from political pressures and/or economic influence was essential for the viability of the system and equitable justice.

7. It was also agreed that effective counter-action against corruption required a sustained effort rather than piece-meal, ad hoc measures, though special initiatives can be taken as an adjunct to an established policy designed to upgrade standards of conduct and create a climate averse to the practice of

corruption. Its analysis and the identification of the lacunae and inadequacies in existing approaches should provide a framework for the necessary reform and for integrated preventive and control strategies. In accordance with the credo of ISSD and the addendum to its Minimum Programme, adopted in Milan on 15 December 1984, which considered its position in the face of the new realities of crime (e.g. organized crime, closely linked to corruption), the aim was to avoid rigid and narrow dogmatism, and to follow, rather, a scientific and humane approach aiming to protect the interests of the larger society and the individual, including both the victim and the offender.

8. The Congress agreed that a comprehensive, diversified and multilevel strategy was required rather than a "war" against bribery and corruption. Its development posed a number of challenges which should be faced jointly, with due regard for the complexity involved and danger of excesses. A major legal pitfall, for instance, lay in the temptation to apply a law of exception likely to lead to human rights infringements and confusion of powers. An equilibrium had to be maintained, avoiding the possible excesses of a government of judges, but also its spectre as an argument for the subjection of judges to the government.

9. It was concluded that, to meet the challenge posed by this problem area, policies should be diversified, multidisciplinary and international in scope, using a variety of approaches and means. Knowledge of the phenomenon of corruption, which relied on anonymous, clandestine transactions, should help to prevent it through both general measures (e.g. of an economic and ethical nature) and specific ones (accounting, fiscal and administrative procedures, or even constitutional means). To facilitate detection and pursuit, special services with specific functions can reinforce the mechanisms of control; the cooperation of civil society also needs to be enlisted. A range of sanctions may well be invoked, from disciplinary measures, civil sanctions, and social defence measures, such as education , to penal sanctions - where international policy development would fill a major need.

10. There can be different degrees of international cooperation in this respect, from relatively loose forms of it to harmonization and even unification - so far, primarily at the regional level. The most traditional, and perhaps least ambitious way is to coordinate autonomous regulations. Somewhat more ambitious is the process of assimilation - for example, by including the corruption of foreign officials under the regulations governing nationals. Next, would come the harmonization of criminal law systems through common directives, for example, on the definition of the term "corruption", or by indicating an appropriate penalty. But the shortcomings of these forms of cooperation have engendered calls for closer international (at least regional) collaboration, with a view to the

possible "unification" of approaches within a coherent framework. Thus, in their Geneva Appeal, European magistrates called for the creation of a real European "judicial space" involving the direct collaboration between judges from different countries. However, unification with a solely repressive aim would be neither realistic nor desirable, and the Congress, therefore, reemphasized the need for a range of options which would form part of concerted strategies including legal and other means designed not so much to "stamp out" corruption as to protect the rule of law from its pernicious inroads.